

EXHIBIT 1

VOLUME: I
 PAGES: 1-253
 EXHIBITS: See Index

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

| | |
|----------------------------|----------------|
| CYCLE-CRAFT CO., INC., | x |
| d/b/a BOSTON | x |
| HARLEY-DAVIDSON/BUELL, | x |
| Plaintiff | x |
| | x CASE NO. |
| vs. | x 04 11402 NMG |
| HARLEY-DAVIDSON MOTOR | x |
| COMPANY, INC., and BUELL | x |
| DISTRIBUTION COMPANY, LLC, | x |
| Defendants | x |

DEPOSITION of JOHN ATWOOD, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jill Kourafas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts held at the Law Offices of Bingham McCutchen, 150 Federal Street, Boston, Massachusetts, on June 7, 2005, commencing at 9:04 a.m.

REPORTERS, INC.
GENERAL & TECHNICAL COURT REPORTING
23 HERRYMOUNT ROAD, QUINCY, MA 02169
617.786.7783/FACSIMILE 617.786.7723

INDEX

| <u>Testimony of:</u> | <u>Page</u> |
|---|-------------|
| JOHN ATWOOD Examination by Mr. Berkowitz | 8 |

INDEX OF EXHIBITS

| <u>Atwood Exhibits</u> | <u>Description</u> | <u>Page</u> |
|------------------------|---|-------------|
| 1 | Motorcycle Dealer Contract Harley-Davidson Motor Company | 6 |
| 1A | Harley-Davidson Motor Company, Inc., Motorcycle Dealer Contract | 6 |
| 2 | Buell Distribution Corporation Motorcycle Dealer Contract | 6 |
| 2A | Buell Distribution Company, LLC Motorcycle Dealer Contract Extension | 6 |
| 3 | Declaration of John Atwood | 6 |
| 4 | Letter to dealer principals, general managers, and vehicle sales managers dated November 30, 2000 bates-stamped HD20003 and 20004 | 39 |
| 5 | Spreadsheet entitled "Boston Harley-Davidson Vehicle Inventory John Atwood's Motorcycles" | 92 |

APPEARANCES OF COUNSEL:

For the Plaintiff:
GOODWIN PROCTER LLP
 (BY: JAMES C. REHNQUIST, ESQ.)
 Exchange Place
 Boston, Massachusetts 02109

For the Defendants:
BINGHAM McCUTCHEON
 (BY: WILLIAM BERKOWITZ, ESQ.)
 -and-
 (BY: WILLIAM BENSON, ESQ.)
 150 Federal Street
 Boston, Massachusetts

ALSO PRESENT:

Steven Hartman, Videographer
 National Video Reporters

INDEX OF EXHIBITS (Continued)

| <u>Atwood Exhibits</u> | <u>Description</u> | <u>Page</u> |
|------------------------|--|-------------|
| 6 | Cycle-Craft Company, Inc., Reviewed Financial Statements, 12/31/96 | 113 |
| 7 | Cycle-Craft Company, Inc., Financial Statements, 12/31/97 | 113 |
| 8 | Cycle-Craft Company, Inc., Financial Statements, 12/31/98 | 114 |
| 9 | Cycle-Craft Company, Inc., Reviewed Financial Statements, 12/31/99 | 114 |
| 10 | Letters to Board of Directors from Stephen Vesey | 114 |
| 11 | Cycle-Craft Company, Inc., Balance Sheet, 12/31/01 | 114 |
| 12 | Cycle-Craft Company, Inc., Balance Sheet, 12/31/02 | 114 |
| 13 | Cycle-Craft Company, Inc., Balance Sheet, 12/31/03 | 114 |
| 14 | Cycle-Craft Company, Inc., Financial Statements, 12/31/04 | 115 |
| 15 | Performance Appraisal for Jason Marasca dated 3/1/00 | 231 |
| 15 | Performance Appraisal for Jason Marasca dated 3/1/00 (Remarked) | 232 |

1 Q. Did he tell you that he had two convictions
2 down in Texas?

3 A. **Yes. See, that was the good part. I didn't**
4 **have to ask him. He just told me.**

5 Q. Did he tell you that the convictions were
6 for insurance fraud and bankruptcy fraud or
7 words to that effect?

8 A. **Words to that effect.**

9 Q. Did he tell you that he had been charged
10 with a crime in Michigan?

11 A. **Yes.**

12 Q. And tell me what he told you about that.

13 A. **Well, basically, that he had a problem with**
14 **the owner of Motown -- I think his name is**
15 **DeMattia -- and there were some allegations**
16 **made against him that were untrue,**
17 **embezzlement.**

18 Q. That is, Mr. Buchbaum was charged with
19 embezzlement?

20 A. **I don't know what the exact charge was, but**
21 **it had to do with embezzling money.**

22 Q. All right. And as I understand your
23 testimony --

24 A. **As far as I understand.**

1 saying it's hot. It's cold.
2 (*Discussion off the record.*)

3 Q. Do you recall any other discussions with
4 Mr. Buchbaum on the topic of his criminal
5 record other than what you've already told
6 us?

7 A. **One more time?**

8 Q. Do you recall --

9 A. **Say it the same way.**

10 MR. BERKOWITZ: In that case, I'm
11 going to have Jill repeat it.

12 THE WITNESS: Okay.

13

14 THE REPORTER: "QUESTION: Do you
15 recall any other discussions with
16 Mr. Buchbaum on the topic of his criminal
17 record other than what you've already told
18 us?"

19

20 A. **(In response to above-read question.)**

21 **No.**

22 Q. Did you consider Mr. Buchbaum's -- well,
23 strike that.

24 Why did you ask Mr. Payne about the

50

1 Q. -- Mr. Buchbaum denied those charges to you?

2 A. **Yes.**

3 Q. Did you look into them any further?

4 A. **In a manner of speaking, yes.**

5 Q. What did you do?

6 A. **I talked to his district manager, his old**
7 **district manager up there, Terry Payne.**

8 Q. What did Mr. Payne tell you?

9 A. **Terry didn't believe the allegations.**

10 Q. Okay. Do you remember anything else that he
11 said?

12 A. **That Ron was -- did an excellent job at**
13 **Motown. The company was almost bankrupt**
14 **when he went in there and he turned it into**
15 **a flourishing company. Gave him an**
16 **excellent recommendation.**

17 Q. Do you remember anything else that he said?

18 A. **No.**

19 Q. Okay. Did you ask Mr. Payne if he was aware
20 of the Texas convictions?

21 A. **No.**

22 THE WITNESS: Is it cold in here?

23 MR. REHNQUIST: I'm okay.

24 THE WITNESS: At least I'm not

52

1 allegations against Ron Buchbaum in
2 Michigan?

3 A. **Piece of mind.**

4 Q. In what respect?

5 A. **I would assume that if these allegations**
6 **against Ron were true, that his district**
7 **manager would know more about it than what I**
8 **could find out from asking other people.**

9 **You know, Terry Payne's a DM, he's gonna**
10 **know what's going on. He's gonna know who**
11 **the dealer is himself, what kind of a dealer**
12 **he is and what kind of a person Ron is**
13 **because they dealt with each other day to**
14 **day or -- I shouldn't say "day to day,"**
15 **maybe week to week or month to month when**
16 **the DM goes in and makes his visits.**

17 Q. And did you --

18 A. **Actually, to tell you truth, it was also a**
19 **recommendation from my accountant that I ask**
20 **about his past.**

21 Q. Is that Mr. Vesey?

22 A. **Vesey.**

23 Q. Sorry.

24 A. **Steve Vesey.**

1 Q. Okay. And did you also look into the Texas
2 convictions?

3 A. **No.**

4 Q. Why not?

5 A. **That's in the past.**

6 Q. All right.

7 A. **I mean, we all make mistakes. Just
8 hopefully you learn from them.**

9 Q. Did you nevertheless consider the
10 convictions and the charge in Michigan to be
11 factors for you to evaluate in determining
12 whether to hire Mr. Buchbaum?

13 MR. REHNQUIST: I object to the
14 form.

15 A. **Yes, it would have to be a factor. How much
16 of a factor is one thing or another, but,
17 yeah, a factor.**

18 Q. And a factor in determining whether he's
19 qualified to be the GM of your dealership?

20 A. **Yes.**

21 Q. Did you -- strike that.

22 You testified earlier that you
23 needed a shark and that Ron Buchbaum --

24 A. **Was the man.**

1 Q. And is he the kind of person who likes to do
2 things himself rather than delegate things
3 to others?

4 MR. REHNQUIST: Object to the form.

5 A. **Yes and no.**

6 Q. How "yes" and how "no"?

7 A. **He is a hands-on manager, he likes to have
8 -- know everything that's going on in the
9 business, but nobody can do it all by
10 themselves, so you have to delegate
11 responsibilities to other people.**

12 Q. Okay.

13 MR. BERKOWITZ: Can we take five
14 minutes?

15 THE VIDEOGRAPHER: The time is
16 9:58. We're off the record.

17 *(Discussion off the record.)*

18 *(Short Recess Taken.)*

19 THE VIDEOGRAPHER: The time is
20 10:08. We're back on the record.

21 Q. Other than Terry Payne, did you talk to
22 anyone else at Harley about Ron Buchbaum
23 before you hired him?

24 A. **Yes.**

54

1 Q. -- was the man?

2 Can you describe his management
3 style for us?

4 A. **Yes. Honest, straightforward, doesn't play
5 favoritism. Everybody -- lets everybody
6 know what is expected of them, and if they
7 don't meet those expectations, that they'll
8 find someone else that will meet those
9 expectations.**

10 Q. Would you describe him as a tough guy to
11 work for?

12 A. **Yes.**

13 Q. Would you describe him as a hands-on
14 manager?

15 MR. REHNQUIST: I object to the
16 form.

17 A. **Definitely.**

18 Q. Does he stay involved in the operations of
19 the business from morning until night?

20 A. **Yes.**

21 Q. And is he involved, to your knowledge, in
22 all the significant business decisions for
23 the company?

24 A. **Yes.**

1 Q. And who else did you talk to?

2 A. **Frank Turck.**

3 Q. Who is Frank Turck?

4 A. **Frank Turck is a person that works for
5 Harley-Davidson Financial Services,
6 sometimes he works with them, sometimes he's
7 contract labor. It seems he is going back
8 and forth, you know, but he's with the motor
9 company --**

10 Q. Okay.

11 A. **-- Harley-Davidson Motor Company.**

12 Q. When did you talk to Mr. Turck?

13 A. **I believe I talked to Frank Turck at the
14 January dealer meeting.**

15 Q. Where was the January dealer -- is it
16 January of '03?

17 A. **Of '03. Where was it? I don't know. I
18 forget.**

19 Q. Was it the same dealer meeting at which you
20 spoke to Terry Payne?

21 A. **I think it was down in Orlando. I'm not
22 sure. I'm not sure exactly. They bounce
23 around from place to place every year. Yes.**

24 Q. "Yes," it was at the same meeting that you

56

1 talked to Terry?

2 A. **Same meeting, yes.**

3 Q. And what did Mr. Turck tell you?

4 A. **Frank Turck thought that Ron was a great guy**
and that he was a very hard worker and that
he did very well at his job.

7 Q. Did any of Mr. Buchbaum's criminal record or
 8 the charge in Michigan come up in that
 9 conversation?

10 A. **I can't recall, but I would have to say**
anything --

12 Q. If you can't recall --

13 MR. REHNQUIST: He's giving us --
 14 let him answer the question.

15 Q. I don't want you to assume, that's all I'm
 16 saying.

17 A. **Anything that happened down in Texas, I**
really didn't discuss with anybody because
as far as I'm concerned, that's his
business and that's something that's in the
past.

22 **My concerns have -- which really**
 23 **wasn't my concern, it was other people's**
concerns about this case that was up with

1 **meeting.**

2 Q. The same dealer meeting that --

3 A. **Same dealer meeting.**

4 Q. -- you've testified about?

5 A. **Yes.**

6 Q. And what did Mr. Strapman tell you?

7 A. **That Ron was -- was a great guy, that he**
did -- everyone did. He did his job very
well. He made his dealers that he worked at
very successful. He was great.

11 Q. Okay. Anyone else at Harley-Davidson that
 12 you spoke to about Ron Buchbaum before you
 13 hired him other than Mr. Turck and Mr. Payne,
 14 and you've now told us about Mr. Strapman,
 15 who was a vendor?

16 A. **I believe I talked to Bill Holiday, telling**
 17 **Bill Holiday, my old district manager for**
 18 **Harley-Davidson, that I was considering**
 19 **hiring Ron as a general manager.**

20 Q. And do you have an understanding --

21 A. **In fact, to tell you truth, now that I**
 22 **recall, he's the one that recommended that I**
 23 **talk to Terry Payne.**

24 Q. Tell me what you can recall from beginning

58

60

1 **him in Motown.**
 2 And I had known Ron prior to -- in
 3 fact, when he just started to work for
 4 Motown, that's when I first met Ron.
 5 And then he worked for Motown, you
 6 know, he sent me catalogs, tell me all the
 7 great things that he was doing up there, and
 8 we kept in touch, you know, here and there.
 9 But, you know, I -- I don't recall whether I
 10 asked Frank Turck specifically or told him
 11 about the problems that were going on with
 12 Motown.

13 Q. Okay. Anyone else at Harley that you spoke
 14 to about Ron Buchbaum before you hired him
 15 besides Mr. Turck and Mr. Payne?

16 A. **Yeah; Ron Strapman.**

17 Q. Who is Ron Strapman?

18 A. **Ron Strapman is a vendor for**
Harley-Davidson.

20 Q. Is he an employee of Harley-Davidson?

21 A. **No. He sells the T-shirts and trinkets.**

22 Q. When was your conversation with
 23 Mr. Strapman?

24 A. **Down at HDU at the -- the winter dealer**

1 to end about your conversation with
 2 Mr. Holiday on the subject of hiring a
 3 general manager?

4 A. **What I just said.**

5 Q. Did you discuss with him Ron Buchbaum,
 6 specifically?

7 A. **Yes.**

8 Q. All right. And do you -- did you have an
 9 understanding as to whether Mr. Holiday knew
 10 who Ron Buchbaum was?

11 A. **No.**

12 Q. But did you tell him that he's somebody out
 13 in Michigan and that Mr. Holiday told you to
 14 talk to Terry Payne about that?

15 A. **Yes.**

16 Q. Is there anyone else at Harley-Davidson that
 17 you can recall talking to about Ron Buchbaum
 18 before you hired him?

19 A. **No.**

20 Q. Ron Buchbaum worked at Motown
 21 Harley-Davidson before he came to work for
 22 you?

23 A. **Yes.**

24 Q. Did you talk to the owner of that